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TRAYLOR *v.* ATKINSON et al.

June 16, 1921.

[108 S. E. 199.]

1. Appeal and Error (§ 790 (3)*)—Question Held Not Moot, though Question Settled in Other Suit.—On appeal from a decree holding that purchaser at partition sale was not entitled to be released from the purchase by reason of a cloud raised by a suit attacking the title, the fact that pending an appeal the alleged defect or cloud upon the title disappeared by expiration of time for appeal in that suit did not render the question as to the lower court's action in refusing to release the purchaser moot, so as to require dismissal of appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 430.]

2. Partition (§ 109 (4)*)—Purchaser at Partition Sale Takes Subject to Clouds upon Title.—One purchasing land at a partition sale, title to which was under a cloud, consisting of a suit attacking a deed, which latter suit was referred to in the bill in the cause, was charged with knowledge of the existence and purpose of such suit, and, upon confirmation of the sale, took the title subject thereto, and, judgment having been entered established the validity of the deed, purchaser was bound to raise the question concerning the right of appeal by the party attacking the title before confirmation of the sale; the court having allowed ten additional days for the express purpose of an examination of the title.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 792.]

3. Judicial Sales (§ 52*)—Court Never Warrants Title Land Sold under Decree.—The court never undertakes to warrant the title to land sold under its decree, and a purchaser at a judicial sale buys at his own risk, but is entitled to relief on the ground of fraud or after-discovered mistake of material facts.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 824.]

Appeal from Chancery Court of Richmond.

Suit by Ethel Walker Atkinson, in her own right and as administratrix c. t. a. of the estate of her mother, Belle V. Atkinson, against the heirs, for a settlement of the estate and a partition sale of certain realty. From the decree of sale Annie G. Traylor, purchaser, appeals. Affirmed.

R. E. Byrd, R. B. Gwathmey, and Fulton & Wicker, all of Richmond, for appellant.

Brockenbrough Lamb, C. V. Meredith, and R. H. Talley all of Richmond, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.